

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND )  
COMPOUNDING PHARMACY, INC. ) MDL No. 2419  
PRODUCTS LIABILITY LITIGATION ) Dkt. No. 1:13-md-2419-RWZ

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This Document Relates to: )  
Suits Naming Specialty Surgery Center, )  
PLLC )

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## Affidavit of Kenneth Lister, M.D.

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STATE OF TENNESSEE  
COUNTY OF Knox

Kenneth Lister, M.D., after first being duly sworn, states as follows:

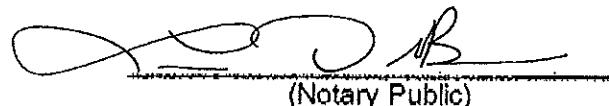
1. I am over 18 years of age, have personal knowledge of the facts contained herein, and I am competent to testify.
2. I was one of the physician owners of SSC in 2012 and 2013.
3. As a physician owner, I was involved in the decision to sell SSC's assets to Cumberland Medical Center in 2013.
4. In 2012, SSC had approximately 15 employees.
5. SSC's computer system was managed remotely by a company in California, retained at the recommendation of SSC's management company, Calisher and Associates.
6. SSC retained the law firm of Gideon, Cooper and Essary in October 2012.
7. SSC exchanged privileged communications with attorneys from Gideon, Cooper and Essary via email between October 2012 and the sale of SSC's assets in 2013.
8. To the best of my knowledge, SSC did not erase any data from its computers when they were sold to Cumberland Medical Center.
9. Prior to the sale of SSC's assets, SSC received presuit notices from a handful of patients asserting potential claims related to the meningitis outbreak.

10. When SSC's assets were sold to Cumberland Medical Center, all the computers were sold collectively as part of a single sale.
11. I was not aware that the computers being sold to Cumberland Medical Center contained privileged information or that Cumberland Medical Center would be able to access that privileged information.
12. I do not recall any request from Cumberland Medical Center that SSC waive any privilege covering materials included as part of the sale of SSC's assets.
13. SSC had no intention to waive any privilege by virtue of the sale of SSC's computers to Cumberland Medical Center.



Kenneth Lister, M.D.

Sworn to and subscribed by me on this 23<sup>rd</sup> day of May, 2016.



(Notary Public)

My Commission Expires: 07/03/2017

